

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Improving Wireless Emergency Alerts and) PS Docket No. 15-91
Community-Initiated Alerting)
Amendments to Part 11 of the Commission's Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)

ORDER

Adopted: August 23, 2021

Released: August 23, 2021

By the Deputy Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) grants the waiver request of the State of Minnesota, Department of Public Safety, Division of Emergency Communications Networks (Minnesota). Specifically, Minnesota seeks a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers' to participate in an end-to-end WEA test that it proposes to conduct in the City of Ranier, Minnesota on August 26, 2021 between 10:00 p.m. and 11:00 p.m. Central Daylight Time (CDT).2 Based on the unique circumstances presented in the Minnesota Letter, as discussed below, we find that a waiver of the Commission's rules would serve the public interest. Accordingly, we grant Minnesota's request to use the Imminent Threat Message category of its upcoming WEA test,3 which would be transmitted to all members of the public with WEA-capable devices and who are opted in, by default, to receive WEA messages, for this upcoming test.

II. BACKGROUND

2. WEA allows authorized government entities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial mobile service providers are Participating CMS Providers.4 The Commission's rules prohibit use of the

1 Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR §§ 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission's rules. See generally 47 CFR § 10.1, et seq.

2 See Letter from John Dooley, IPAWS Program Manager, State of Minnesota, Department of Public Safety, Emergency Communication Networks, to Mr. John Evanoff, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Jul. 27, 2021) (on file in PS Docket No. 15-91) (Minnesota Letter).

3 Although Minnesota states that it will use a Civil Danger Warning alert code, Commission rules outline only three categories of WEA alerts. Minnesota stated it will use the Imminent Threat message category. 47 CFR §10.400; Minnesota Letter at 1; Telephone call between John Dooley, IPAWS Program Manager, State of Minnesota, Department of Public Safety, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (Aug. 20, 2021) (Bizhko-Dooley Telephone Call).

4 Commercial Mobile Alert System, PS Docket No. 07-287, Third Report and Order, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the requirements for wireless providers volunteering to participate in WEA).

WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁵ The Commission's rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.⁶ State/Local WEA test alert messages differ from actual WEAs in order to reduce public confusion and minimize any chance that they might be misconstrued as WEAs about actual emergencies. Consumers will not receive State/Local WEA test alerts by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.⁷ Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.⁸ While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,⁹ Participating CMS Providers were not required to support State/Local WEA Tests until December 19, 2019, at which time the FEMA Integrated Public Alert and Warning System (IPAWS) infrastructure (through which all alerts are authenticated, validated, and delivered to Participating CMS Providers) was capable of fully supporting these enhancements.¹⁰ Accordingly, as of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Tests category do not need to request a waiver from the FCC to permit such WEA test alerts to be transmitted to the public.¹¹

3. Minnesota requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on August 26, 2021 between 10:00 p.m. and 11:00 p.m. CDT using the Imminent Threat Message alert message category.¹² Minnesota states that the proposed WEA end-to-end test would be targeted to the City of Ranier, in Koochiching County, as part of an extensive, six-year effort to design a proficiency exercise for a diverse group of emergency personnel to simulate an incident like that which occurred in 2015 when the rail bridge collapsed.¹³ Because International Falls, Minnesota, is one of the top five gateways for U.S./Canada imports and exports in

⁵ 47 CFR § 10.520(d). The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. *Compare* 47 CFR § 10.520 with 47 CFR § 11.31(a)(2).

⁶ 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency Management Agency and in periodic tests of WEA's C-Interface. *Id.* On November 1, 2016, the Commission adopted a Report and Order that amended the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public to assess how WEA is working within their jurisdictions. *See Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

⁷ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

⁸ *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

⁹ *Id.* at 11161, 11165, paras. 79, 85 (stating that the deadline for state and local testing is 30 months after the rule's publication in the Federal Register); *Federal Communications Commission, Wireless Emergency Alerts, Amendments to Rules Regarding the Emergency Alert System*, 81 Fed. Reg. 75710 (Nov. 1, 2016) (establishing the date of Federal Register publication).

¹⁰ *See Public Safety and Homeland Security Bureau Announces New Enhancements to Wireless Emergency Alerts Are Now Available*, PS Docket No. 15-91, Public Notice, DA 19-1297 (PSHSB Dec. 19, 2019).

¹¹ *Id.*

¹² Bizhko-Dooley Telephone Call.

¹³ Enger, John, *Rail Bridge Burns, Collapses Near International Falls*, Minnesota Public Radio News (May 27, 2015), <https://www.mprnews.org/story/2015/05/27/bridge-collapse>.

terms of numbers of truck or rail containers,¹⁴ Minnesota has made preparation for hazardous material emergency response a priority.¹⁵ Accordingly, it seeks to simulate a day-long hazardous material incident on August 26, 2021, during which U.S. federal, state, and county personnel, plus some Canadian representatives, will practice assessing and remediating a simulated incident of a derailed train carrying hazardous materials.¹⁶ Furthermore, conducting an alerting exercise in the City of Ranier (which sits along the border between the U.S. and Ontario, Canada) is important and unique because Ranier receives cell signals from both the U.S. and Canada. Ranier wireless subscribers may be on a Canadian wireless network in one location and a United States network in another location across the street in close proximity. Accordingly, this alerting exercise would help emergency personnel collect data and determine the extent to which a WEA issued on the U.S. networks only would reach those in the Ranier area or would reach only some residents sporadically depending on their location in Ranier. Minnesota would issue two messages, one consisting of 90 characters and another consisting of 360 characters. The 360-character message would read: “This is a Test of the Wireless Emergency Alert system. This test is brought to you by Koochiching County Please take the survey and answer a few questions: <https://www.surveymonkey.com/r/HG8BMM9> No Actual Emergency is in progress this is just a drill.” The 90-character message would read: “This is a test of the Koochiching Cnty WEA System. <https://www.surveymonkey.com/r/LQ7R73P>.”¹⁷

4. Minnesota states that it has conducted multi-media outreach to the public about the WEA test.¹⁸ Specifically, it states it has developed a comprehensive media campaign directed at its constituents and surrounding counties, including Public Information Officers in all affected jurisdictions for distribution to all surrounding community and Canadian media outlets, to ensure public understanding and emphasize it is just a test.¹⁹ Its outreach initiative includes public outreach via the affected local jurisdictions, local broadcasters, newspapers, social media, relevant websites, and cable providers.²⁰

III. DISCUSSION

5. A provision of the Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²¹ The Commission may find good cause to extend a waiver, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²²

6. Based on the circumstances in this case, we find good cause exists to grant a waiver in the instant case. Minnesota has submitted compelling details supporting its waiver request, including the 2015 rail accident and rail bridge fire, the significant traffic over the International Falls bridge, the

¹⁴ U.S. Department of Transportation, Bureau of Transportation Statistics, Table 1-52: U.S.-Canadian Border Land-Freight Gateways: Number of Incoming Truck or Rail Container Crossings (2016) available at <https://www.bts.gov/content/us-canadian-border-land-freight-gateways-number-incoming-truck-or-rail-container-crossings>.

¹⁵ Bizhko-Dooley Telephone Call. *See also* Rainey River International Full-Scale Exercise: Operation Walleye, Staff Orientation Powerpoint, on file in Docket 15-91 (*Minnesota Staff Materials*).

¹⁶ Minnesota expects the appropriate alert period will be between 10:00 p.m. to 11:00 p.m. because its timing depends on the earlier part of the simulation exercise.

¹⁷ Minnesota *Letter* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 CFR § 1.3.

²² *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

increased risk of a hazardous materials emergency incidents given the high volume of traffic in the area, and the need for more precise data on WEA delivery created by overlapping U.S. and Canadian wireless networks.²³ We agree that conducting the end-to-end WEA test as proposed by Minnesota would allow the public, city officials, and alert originators to gather more precise data on WEA delivery, determine geographic reach, receive public feedback, and gauge the effectiveness of internal policies. Accordingly, based on the totality of the circumstances, we grant Minnesota's request to conduct its live end-to-end WEA test during the planned simulated incident of a derailed train carrying hazardous materials.

7. Minnesota may conduct its planned exercise on August 26, 2021 using the Imminent Threat category. We encourage Minnesota to use its comprehensive public outreach campaign to encourage its community, and those in affected adjacent local jurisdictions, to participate in, and provide feedback on, this important test.

8. The proposed test would not be in the public interest if it were presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public.²⁴ We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Minnesota Letter, including outreach to the public, press, and relevant government agencies.

9. We further condition this waiver to require that the test may only be conducted in the time and on the date referenced in the Minnesota Letter and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

- (1) this test is necessary to assess and validate the readiness and effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) Minnesota has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations, such as police and fire agencies and 911 Public Safety Answering Points within the county and surrounding counties, to ensure that they are aware of the test and can confirm to the public that the WEA message is a test; and will also notify Minnesota Government staff, major local media outlets, neighboring jurisdictions, and Public Information Officers;
- (3) pre-test publicity efforts will include a comprehensive multimedia campaign to ensure public understanding of the function and utility of WEA, the date and time of the test, and an awareness that the WEA alert is just a test;
- (4) use of "test" wording as described by the Minnesota Letter will be used in the test message; and
- (5) the WEA test is not intended as a substitute for other scheduled WEA tests.

10. We also require that the test and any post-test analysis and reports that Minnesota may conduct or cause to be produced, are done in a manner consistent with customers' expectations of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA systems and infrastructure.²⁵ We encourage Minnesota to report its test results in electronic format to the Bureau.

²³ *Minnesota Letter* at 1-2 and Bizhko-Dooley Telephone Call.

²⁴ For example, transmitting a WEA test message without first informing emergency responders, such as 911 call centers, and the public about the test, could predictably result in confusion or panic.

²⁵ *See* 47 U.S.C. § 222.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, 47 CFR §§ 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, ARE WAIVED, to allow a one-time test of WEA in Ranier, Minnesota as requested by the State of Minnesota, Department of Public Safety, Division of Emergency Communications Networks on August 26, 2021, which test must be conducted subject to the conditions described herein. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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